

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 956 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VISHNUPRASAD RAMANLAL OZA

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR HARDIK RAVAL for the petitioner

MR NN PANDYA for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner has challenged by this Special Civil Application the action of the respondents to supersede him in the matter of promotion to the post of Head Constable Gr.II and to the post of Head Constable Gr.I. The deemed date of the promotion has been prayed for in the cadre of Head Constable Gr.II from 1969 and in the cadre of Head Constable Gr.I from 1976. So far as the claim of the petitioner regarding the deemed date of

promotion from the year 1969 in the cadre of Head Constable Gr.II is concerned, it is difficult to accept. The challenge to the supersession has been made by the petitioner after more than 15 years and in case, this prayer is accepted, then it will affect those persons who have been promoted meanwhile. In the matter of seniority and further promotion no such order which may adversely affect the seniority of the persons who are not before this Court can be made. Otherwise also the petitioner has not challenged the promotions of those persons made in the year 1969.

2. The respondents have filed the reply and therein they have come up with a case that the petitioner passed the S.S.C. examination in the year 1969-70. On 29-4-1970 the petitioner was placed under suspension for disobeying the order of the superior officer. A charge was framed against him which was proved, and he was removed from the services with effect from 1-6-1971 under the order dated 29th May, 1971. On appeal, the penalty of removal was substituted by the penalty of reduction in the pay of the petitioner for a period of two years. This punishment has been challenged by the petitioner by filing second appeal in the department, but that has also been dismissed. Then he approached to this court, but only partial relief has been granted. So far as the penalty part is concerned, it was not interfered. In the year 1972 again the petitioner was indulged in indisciplinary activity for which the chargesheet was given to him which was proved and penalty of reduction in the pay for a period of two years has been given. This order has been made on 30th September, 1975. The petitioner filed an appeal but that has been rejected. Again in 1972 the petitioner absented himself from duty and disobeyed the order of the superior officer for which he was given the chargesheet which was proved against him and the penalty of reduction in the pay has been made in this chargesheet also. The respondents have further come up with a case that in the year 1976 then in the year 1978 and lastly in the year 1979, the case of the petitioner was considered for promotion, but he was not found suitable by the departmental promotion committee. The petitioner has not challenged the supersession which was made in the year 1976, 1978 and 1979 for all these years and he filed this Special Civil Application in the year 1984.

3. Looking to the service record of the petitioner, where there are three penalties, the decision of the authorities not to give him the promotion on the higher post cannot be said to be illegal and arbitrary which

calls for interference of this Court.

4. There is yet another ground on which this writ petition deserves to be dismissed. The petitioner has not disclosed the material fact that he has been punished in the department inquiry for three times, on the contrary, the petitioner has stated in the writ petition that he has absolutely untarnished and unblemished service career. In para 2 of this writ petition, the petitioner made a statement which reads as under:-

That the petitioner is working on the said post since 27-2-65, i.e. from the date of his appointment in the Police Department. The petitioner submits that since his appointment till today the petitioner has an absolutely untarnished and unblemished service career. The petitioner submits that there is not a single dark spot in his service career. The petitioner humbly submits that neither of the respondents will be able to point out a single instance against the petitioner, may it be very minor or major where a finger could be pointed towards the petitioner. The petitioner submits that his immediate superiors have always been pleased with the work put up by the petitioner.

These averments made by the petitioner are absolutely false and incorrect. The averments which have been made by the respondents in the reply, a copy of which has been given to the counsel for the petitioner in the year 1984, have not been controverted. It is a case where the petitioner has concealed the material facts. Not only this, the petitioner has deliberately made false statements in para no.2 of this writ petition. Last but not the least, delay will also come in the way of the petitioner. The challenge made by the petitioner of his supersession in the year 1969 and 1976 suffers from vice of the delay. It is true that after admission of the Special Civil Application normally this Court may not dismiss the writ petition on the ground of delay, but where by lapse of time, the other persons who have acquired the right of seniority and promotion and their seniority is likely to be affected in case of grant of relief to the petitioner, then this delay is to be considered strictly. In case the petitioner's prayer is accepted, then as discussed earlier, it will affect the seniority of the persons who have been promoted in the year 1969 and 1976. Apart from this, as stated earlier, the promotions of those persons are not challenged nor those persons are party to this Special Civil

Application.

5. Taking into consideration the totality of the facts of the case, this Special Civil Application deserves to be dismissed. Order accordingly. This Special Civil Application is dismissed. Rule discharged with no order as to costs.

zgs/-